Supreme Court, U.S.
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No. 85-1085

In the Supreme Court of the United States

OCTOBER TERM, 1985

AFRO-AMERICAN POLICE ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners Afro-American Police Association, Inc., et al., *prevailing parties in the courts below*, have petitioned the Court to issue a writ of certiorari to affirm the judgment of the United States Court of Appeals for the Second Circuit entered on December 19, 1985. That judgment affirmed the district court's denial of the United States' motion, based on this Court's decision in *Firefighters Local Union No. 1784* v. *Stotts*, No. 82-206 (June 12, 1984), to delete hiring quotas for minorities and women from a decree entered in 1979 to remedy violations of Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) by the Buffalo police and fire departments. The courts below rejected the United States' argument that Section 706(g) of Title VII (42 U.S.C. 2000e-5(g)), as interpreted by this Court in *Stotts*, prohibits the award of preferences based on race, ethnic background, or sex to nonvictims of discrimination.

On October 7, 1985, the Court granted the petitions for certiorari in *Local No. 93, International Association of Firefighters* v. *City of Cleveland*, No. 84-1999, and *Local 28, Sheet Metal Workers' International Association* v. *EEOC*, No. 84-1656, both of which present the question whether Section 706(g) prohibits the award of racial preferences to nonvictims of discrimination, and the latter of which is another Second Circuit case which the opinion in the instant case cited as controlling.* In addition, the United States is filing a petition for a writ of certiorari simultaneously with this memorandum seeking review of the court of appeals' decision. Under these circumstances, the issue raised by this petition can be fully considered by the Court without the necessity of resolving the question whether a completely prevailing party in the court of appeals may seek certiorari. See R. Stern & E. Gressman, *Supreme Court Practice* § 2.4 (5th ed. 1978).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

FEBRUARY 1986

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*These cases are scheduled to be argued in tandem on February 25, 1986. This issue is also presented in several other petitions for certiorari currently before the Court. See *Paradise* v. *Prescott*, 767 F.2d 1514 (11th Cir. 1985), petition for cert. pending, No. 85-999; *Devereaux* v. *Geary*, 765 F.2d 268 (1st Cir. 1985), petition for cert. pending, No. 85-492; *Turner* v. *Orr*, 759 F.2d 817 (11th Cir. 1985), petition for cert. pending, No. 85-177.